

IN THE HIGH COURT OF TANZANIA
LABOUR DIVISION
AT DAR ES SALAAM

MISCELLANEOUS APPLICATION NO. 282 OF 2022

(Arising from the Ruling issued on 30/10/2019 by Hon. Z.G. Muruke, J, in Labour Revision No. 568 of 2018)

ECONOMIC AND SOCIAL RESEARCH INSTITUTE APPLICANT

VERSUS

JOCELYNE MKILIMA RESPONDENT

RULING

Date of last Order: 24/10/2022
Date of Ruling: 08/11/2022

B. E. K. Mganga, J.

On 22nd June 2022, applicant filed this application through e-filing system seeking extension of time within which (i) to file a notice of Appeal so that she can appeal to the Court of Appeal against the Ruling that was issued by this Court (Hon. Z.G. Muruke, J) on 30th October 2019 and (ii) to file a letter to be supplied with a copy of proceedings, Ruling, and drawn order. In support of the application, applicant filed an affidavit sworn by Nyangi Georgia Wambura, learned advocate. In the said affidavit, the deponent deponed *inter-alia* that, on 30th October 2019, issued a ruling that CMA had no jurisdiction and directed parties

to act in appropriate forum, as a result, respondent referred the dispute before the sole Arbitrator. It was deponed further that, applicant was aggrieved by the ruling issued by the sole arbitrator, as a result, she filed Miscellaneous application No. 67 of 2021 before this court seeking an order of the court to remove the sole Arbitrator from conducting arbitration proceedings between the parties but on 7th June 2022 the said application was dismissed. That, aggrieved by the ruling of this court dated 7th March 2022, applicant filed a Notice of Appeal before the Court of Appeal but the same was withdrawn on 20th May 2022. It was further deponed that, applicant was supplied with the order of the Court of Appeal withdrawing her Notice of Appeal on 17th June 2022. It was also deponed that there is illegality on the impugned Ruling of this court dated 30th October 2019. It was further deponed that the delay is not inordinate; that, applicant has been in court corridors and that, the delay was beyond applicant's control.

Respondent filed the counter affidavit opposing the application. In her counter affidavit, respondent deponed *inter-alia* that, applicant did not serve him with a Notice of Appeal.

With consent of the parties, the application was disposed by way of written submissions. In complying with submission orders, applicant

enjoyed the service of Zurie'el Kirunde Kazungu, learned advocated while respondent opted not engage an advocate.

Submitting on behalf of the Applicant, Kazungu argued that applicant delayed filing this application for two years. Counsel submitted that the impugned ruling of this court was issued on 30th October 2019 and that after the said Ruling, parties went back to the sole arbitrator, who, on 28th August 2020, issued a ruling which applicant was unhappy with, as a result, she filed miscellaneous application No. 67 of 2021 but the same was dismissed by this court on 7th March 2022. Counsel submitted further that, applicant filed a Notice of Appeal to the Court of Appeal but she withdrew it and was served with the Order on 17th June 2022. Kazungu added that, on 22nd June 2022, applicant filed an application before this court but it was struck out because the Swahili language that was used by the applicant was not proper. Counsel argued that that contributed to the delay of filing this application and cited the case of ***Michael Lessani Kweka vs. John Eliafye*** [1997]TLR 152 to the position that inadvertence is not a sufficient ground for extension of time but in certain circumstances it can be a ground especially when applicant has acted reasonably and diligently to discover the omission.

Counsel for the applicant argued further that, there was technical delay on ground that after the impugned ruling, parties went before the sole arbitrator and that there is illegality. Counsel for the applicant cited the case of ***Morris Shepea v. Rafael Lenesira Mollé***, Land Application No. 45 of 2021, HC(unreported), ***Principal Secretary, Ministry of Defence & National Service v. Devran Valambhia***[1992]TLR 185, CAT, ***Habib Salim v. Hussein Bafagi***, Civil Application No. 52 of 2009, CAT(unreported) to bolster his submissions that illegality is a good ground for extension of time. Counsel also cited the case of ***Mkunazini Shipping Enterprises and Another v. Said Khamis Hamed***, ZNZ Civil Application No. 05 of 2012 and ***Hussen Juma v. Farouk Mohamed***, Miscellaneous Civil Application No. 26 of 2020,HC(unreported) to implore the court to grant the application.

On her side, respondent, submitted that, after issuance of the impugned ruling, applicant was not aggrieved, which is why, they resorted to the sole arbitrator and no appeal was preferred. She submitted further that, the dispute proceeded before the sole arbitrator until when applicant was unhappy with the ruling of the arbitrator, as a result, applicant filed miscellaneous application No. 67 of 2021 before

this court but the same was dismissed for want of merit on 7th March 2022. She went on that, applicant filed the Notice of Appeal intending to challenge the Ruling of this court dated 7th March 2022 and that, she was not served with the Notice of Appeal. She argued further that, applicant withdrew the said Notice before the Court of Appeal again without serving Notice to the respondent.

On grounds for the delay, respondent submitted that, no action was taken by the applicant from the date of issuing the ruling on 30th October 2019 and that whatever was done thereafter, is not related to appealing procedures for the court to hold that applicant acted from the beginning. Respondent cited the case of **Michael Lessan Kweka v. John Eliafye** [1997]TLR 152 to support her argument that applicant has not disclosed as to when she noted that there is an error in the impugned ruling for the court to hold that she was diligent and acted reasonably.

On technical delay, respondent submitted that, the same cannot apply because no action was taken by the applicant to appeal against the said ruling and that applicant has failed to account for each day of the delay for three years from 30th October 2019. She went on that, applicant has not adduced sufficient or good cause for the delay and

cited the case of ***Sebastian Ndaula v. Grace Rwamafa***, Civil Application No. 4 of 2014, ***Republic v. Kaponda & Others*** [1985] TLR 84 and referred to the ***Bafagi's case*** and ***Mkunazini's case*** cited by the applicant.

On illegality as a ground for extension of time, respondent submitted that, the alleged illegality is not apparent on the face of the record and further that the affidavit in support of the application does not disclose sufficiently the alleged illegality. She cited the case of ***Fatma Hussein Sharrif v. Alikhan Abdallah and 3 others***, Civil Application No. 536 of 2017, CAT(unreported) to support her argument that for illegality to be a ground for extension of time, it must be apparent on the face of the record. Respondent prayed the application be dismissed for want of merit.

Applicant though had a right to file rejoinder submissions, she did not exercise that right. That being the position, I will only consider submissions in chief and reply thereto by the respondent.

As pointed hereinabove, applicant has filed this application seeking the court to extend time within which she can file a Notice of appeal, a letter praying to be supplied with the record, ruling and the order. It is clear from the Notice of Application that applicant intends to appeal

against the ruling that was delivered by this Court (Hon. Z.G. Muroke, J) on 30th October 2019. It is also clear that applicant filed this application on 22nd June 2022. In the affidavit in support of the application, it was deponed on behalf of the applicant that she filed a Notice of Appeal before the Court of Appeal and that she withdrew the said Notice and was served with the order on 17th June 2022. I should point out right here that, the said Notice and the Order by the Court of Appeal has nothing to do with the ruling that was issued by Hon. Z.G. Muroke, J, on 30th October 2019, which is the subject of this application. The Order of the Court of Appeal is clear that applicant intended to appeal against the Ruling and Order of this Court (Mganga, J) dated 7th June 2022. Therefore, there is no Order of the Court of Appeal relating to the Ruling that was issued by Hon. Z.G. Muroke, J, on 30th October 2019. There is no evidence adduced by the applicant showing that she took any action soon after the said Ruling was delivered on 30th October 2019. Since there is no such attempt, technical delay ground relied upon by the applicant cannot apply in this application. It is a common ground that after issuance of the impugned ruling, respondent referred the matter before a sole arbitrator and what is clear is that applicant was unhappy with the ruling of the arbitrator. Applicant filed miscellaneous application

No. 67 of 2021 praying the court to remove the sole arbitrator from conducting arbitration proceedings between the parties. That cannot be regarded that applicant took action to challenge the Ruling of this court dated 30th October 2019, and cannot at any rate, be regarded as a base to hold that there was technical delay.

It was submitted by counsel for the applicant that applicant acted reasonably and diligently. On her side, respondent submitted that she was not, and that, applicant failed to disclose as to when she noted that the challenged ruling has errors and illegalities. I agree with the respondent on that aspect. The affidavit of the applicant is silent on that issue. It is now a settled principle that for illegality to be a good ground for extension of time, it must be apparent on the face of the record as it was held by the Court of Appeal in the case of *Lyamuya Construction Co. Ltd vs Board of Registered of Young Women's Christian Association of Tanzania*, Civil Application No. 2 of 2010 [2011] TZCA 4. In the case of *African Marble Company Limited (AMC) vs Tanzania Saruji Corporation (TSC)*, Civil Application No. 8 of 2005 [2005] TZCA 87, *Fatma Hussein Shariff vs Alikhan Abdallah & Others*, Civil Appeal No. 536 of 2017 [2021] TZCA 47 and *Chandrakant Joshubhai Patel v. Republic*, [2004] TLR 218 the

Court of Appeal held that for an illegality to be regarded as apparent on the face of record, must be such as can be seen by one who runs and reads, that is, an obvious and patent mistake and not something which can be established by a long-drawn process of reasoning on points on which there may conceivably be two opinions. The alleged illegality in the application at hand is not apparent on the face of record therefore does not qualify to be a ground for extension of time.

The record shows that the impugned ruling was delivered on 30th October 2019 in presence of Deodatus Saganiko, the Human Resources Administrative Officer of the applicant and the respondent. Therefore, applicant was aware of the said Ruling from date it was delivered and had ample time to file the notice if she wished but took no action. Applicant was indifference and I would say, she has filed this application as an afterthought. In my view, afterthought has never been and will not be a ground for extension of time. More so, as submitted by the respondent, applicant was supposed to account for each day of the delay from the date of issuance of the impugned Ruling namely on 30th October 2019 to the date of filing this application namely on 22nd June 2022 but she has failed. It has been held several times by this court and

the Court of Appeal that in an application for extension of time, applicant must account for each day of the delay. See the case of **Sebastian Ndaula vs. Grace Lwamafa**, Civil Application No. 4 of 2014, CAT (unreported), [Said Nassor Zahor and Others vs. Nassor Zahor Abdallah El Nabahany and Another](#), Civil Application No. 278/15 of 2016, CAT, (unreported), [Finca T. Limited & Another vs Boniface Mwalukisa](#), Civil Application No. 589 of 2018) [2019] TZCA 56, [Zawadi Msemakweli vs. NMB PLC](#), Civil Application No. 221/18/2018 CAT (unreported), [Elias Kahimba Tibendalana vs. Inspector General of Police & Attorney General](#), Civil Application No. 388/01 of 2020 CAT (unreported) and **Bushiri Hassan vs. Latifa Lukio Mashayo**, Civil Application No. 3 of 2007, CAT (unreported) to mention a few. In **Mashayo's case** (supra), the Court of Appeal held inter-alia that: -

"...the delay of even a single day, has to be accounted for otherwise there would be no proof of having rules prescribing periods within which certain steps have to be taken."

As pointed hereinabove, in the application at hand, applicant has failed to account for each day of the delay and has not adduced good grounds for the delay. It is clear in my mind that applicant has

filed this application as an afterthought because initially she took no step. It seems she was satisfied with the impugned ruling. Therefore, she cannot be heard complaining after three years that she was aggrieved with that ruling. The delay of three years, in my view, is in itself, inordinate.

For the foregoing, I hereby dismiss this application for want of merit.

Dated in Dar es Salaam on this 08th November 2022.



B. E. K. Mganga
JUDGE

Ruling delivered on this 08th November 2022 in chambers in the presence of Zuri'el Kazungu, Advocate for the applicant and Jocelyne Mkilima, the Respondent.



B. E. K. Mganga
JUDGE